

POLYGRAPH EXAMINERS ACT

CHAPTER 441 ³⁵

S. B. No. 97

An Act relating to the licensing of polygraph examiners; creating a Polygraph Examiners Board; granting certain powers to the Polygraph Examiners Board; establishing minimum instrumentation requirements; providing for penalties for violation of provisions of this Act; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Short title

Section 1. This Act shall be known, and may be cited, as the Polygraph Examiners Act.

Definitions

Sec. 2. In this Act, unless the context requires a different definition,

(1) "board" means the Polygraph Examiners Board;

(2) "secretary" means that member of the Polygraph Examiners Board selected by the board to act as secretary;

(3) "internship" means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the board at the commencement of such internship;

(4) "person" means any natural person, firm, association, copartnership, or corporation; and

(5) "polygraph examiner" means any person who uses any device or instrument to test or question individuals for the purpose of verifying truth of statements.

Instrumentation

Sec. 3. Every polygraph examiner shall use an instrument which records visually, permanently, and simultaneously: (1) a subject's cardiovascular pattern and (2) a subject's respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded.

Creation of the board

Sec. 4. (a) There is hereby established in the Engineering Extension Service, Police Training Division, Texas A & M University System, a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment, all of whom shall have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment is an active polygraph examiner. No two board members may be employed by the same person or agency. At least two members must be qualified examiners of a governmental law enforcement agency, one of which shall be the supervisor of the polygraph section of the Department of Public Safety, and at least two members must be qualified polygraph examiners in the commercial field. The members

35. Vernon's Ann.Civ.St. art. 2615h, §§ 1-26.

shall be appointed by the Governor of the State of Texas with the advice and consent of the Senate for a term of six years. The terms of office of members appointed to the initial board are two for two years; two for four years; and two for six years. Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term.

(b) The number of employees and the salaries of each, including travel and expense allowance of the members of the Board shall be as fixed in the General Appropriation Bill.

(c) The board shall meet within 30 days after the effective date of this Act and elect a chairman, vice-chairman, and secretary from among its members. At the meeting, the board shall specify dates spaced at three month intervals on which examinations for polygraph examiners' licenses will be held. A copy of those dates shall forthwith be delivered to the secretary.

(d) The vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board.

Administration and expenses

Sec. 5. (a) The board shall issue regulations consistent with the provisions of this Act for the administration and enforcement of this Act and shall prescribe forms which shall be issued in connection therewith.

(b) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members, and that the board members are fully qualified to act.

(c) All fees collected under the provisions of this Act shall be paid to the Treasurer of the State of Texas. Funds necessary for the enforcement of this Act and the administration of its provisions shall be appropriated by the Legislature, but the funds so appropriated for a biennium shall not exceed the total amount of the fees which it is anticipated will be collected hereunder during such biennium.

Unauthorized practice

Sec. 6. It shall be unlawful for any person, including a city, county or state employee, to administer polygraph examinations or attempt to hold himself out as a polygraph examiner without a license approved by the board and issued by the board.

Examiner's license qualifications

Sec. 7. A person is qualified to receive a license as an examiner

- (1) who is at least 21 years of age; and
- (2) who is a citizen of the United States; and
- (3) who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness; and
- (4) who has not been convicted of a felony or a misdemeanor involving moral turpitude; and
- (5) who holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers, or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application; and
- (6) who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and

(7) who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

(8) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of \$5,000.00 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

Acquisition of license by present examiners

Sec. 8. On the effective date of this Act, any person who is actually engaged in the occupation, business, or profession of a polygraph examiner and who is using for that purpose the instrumentation prescribed in Section 3, shall, upon application within 90 days after the effective date of this Act and payment of the required license fee, be issued a polygraph examiner's license which shall be effective no longer than one year from date of issuance, provided, however, that the board may require such applicant to submit satisfactory proof that he is so engaged. The applicant must also satisfy such requirements of Section 7(1)–(4) and Section 7(7)–(8) of this Act.

Applications for original license

Sec. 9. Applications for original licenses shall be made to the secretary of the board in writing under oath on forms prescribed by the board and shall be accompanied by the required fee, which is not refundable. Any such application shall require such information as in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

Non-resident applicants

Sec. 10. (a) Each non-resident applicant for an original license or a renewal license shall file with the board an irrevocable consent that actions against said applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process on any such action may be served on the applicant by leaving two copies thereof with the secretary. Such consent shall stipulate and agree that such service or process shall be taken and held to be valid and binding for all purposes. The secretary of the board shall send forthwith one copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

(b) Non-resident applicants must satisfy the requirements of Section 7 of this Act.

Applicant with out-of-state license

Sec. 11. An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the board, in its discretion, upon payment of a fee of \$60 and the production of satisfactory proof that

- (1) he is at least 21 years of age; and
- (2) he is a citizen of the United States; and
- (3) he is of good moral character; and

(4) the requirements for the licensing of polygraph examiners in such particular state or territory of the United States were at the date of the

applicant's licensing therein substantially equivalent to the requirements now in force in this state; and

(5) the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two years prior to his application for license hereunder; and

(6) such other state or territory grants similar reciprocity to license holders of this state; and

(7) he has complied with Section 10 of this Act.

Internship license

Sec. 12. (a) Upon approval by the board, the secretary shall issue an internship license to a trainee provided he applies for such license and pays the required fee within 10 days prior to the commencement of his internship. The application shall contain such information as may be required by the board.

(b) An internship license shall be valid for the term of 12 months from the date of issue. Such license may be extended or renewed for any term not to exceed 6 months upon good cause shown to the board.

(c) A trainee shall not be entitled to hold an internship license after the expiration of the original 12-month period and 6-month extension, if such extension is granted by the board, until 12 months after the date of expiration of the last internship license held by said trainee.

Examination and license fees

Sec. 13. (a) The fee to be paid by an applicant for an examination to determine his fitness to receive a polygraph examiner's license is \$20, which is not to be credited as payment against the license fee.

(b) The fee to be paid for an original polygraph examiner's license is \$60.

(c) The fee to be paid for an internship license is \$30.

(d) The fee to be paid for the issuance of a duplicate polygraph examiner's license is \$10.

(e) The fee to be paid for a polygraph examiner's renewal license is \$25.

(f) The fee to be paid for the extension or renewal of an internship license is \$25.

(g) The fee to be paid for a duplicate internship license is \$10.

(h) The fees required by this Act may be paid by the governmental agency employing the examiner.

Display of license and signature thereon

Sec. 14. A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the board members and shall be issued under the seal of the board.

Change of business address

Sec. 15. Notice in writing shall be given to the secretary by the licensed examiner of any change of principal business location within 30 days of the time he changes the location. A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.

Termination and renewal of examiner's license

Sec. 16. Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed

annually as prescribed by the board. A polygraph examiner whose license has expired may at any time within two years after the expiration thereof obtain a renewal license without examination by making a renewal application therefor and satisfying Section 7(2), (3), and (4). However, any polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if within two years after termination of such service, training, or education except under condition other than honorable, he furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated. Section 7(2), (3), and (4) of this Act must also be satisfied.

License required to maintain suit

Sec. 17. No action or counterclaim shall be maintained by any person in any court in this state with respect to any agreement or service for which a license is required by this Act, or to recover the agreed price or any compensation under such agreement, or for such services for which a license is required by this Act without alleging and proving that such person had a valid license at the time of making such agreement or perform such services.

Refusal, suspension, revocation—grounds

Sec. 18. The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

- (1) for failing to inform a subject to be examined as to the nature of the examination;
- (2) for failing to inform a subject to be examined that his participation in the examination is voluntary;
- (3) material misstatement in the application for original license or in the application for any renewal license under this Act;
- (4) wilful disregard or violation of this Act or of any regulation or rule issued pursuant thereto, including, but not limited to, wilfully making a false report concerning an examination for polygraph examination purposes;
- (5) if the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;
- (6) making any wilful misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;
- (7) having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;
- (8) allowing one's license under this Act to be used by any unlicensed person in violation of the provisions of this Act;
- (9) wilfully aiding or abetting another in the violation of this Act or any regulation or rule issued pursuant thereto;
- (10) where the license holder has been adjudged as habitual drunkard or mentally incompetent as provided in the Probate Code;
- (11) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this Act; or
- (12) failing to inform the subject of the results of the examination if so requested.

Violation by one examiner or trainee not to affect employer

Sec. 19. Any unlawful act or violation of any of the provisions of this Act on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the board that the polygraph examiner-employer has wilfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

Registration of examiners with county clerks

Sec. 20. Each polygraph examiner shall register with the county clerk in the county wherein he maintains a business address. The county clerk of each county shall maintain a list of all polygraph examiners registered in his county.

Board hearing

Sec. 21. (a) When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension, or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within the 20-day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.

(b) The board shall conduct the administrative hearings and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

Judicial review

Sec. 22. Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within 30 days thereafter in the district court in the county where the person resides or in the district court of Travis County, Texas, and the court is vested with jurisdiction and it shall be the duty of the court to set the matter for hearing upon 10 days written notice to the board and the attorney representing the board. The court in which the petition of appeal is filed shall determine whether or not

a cancellation or suspension of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the board should be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the board, and the court shall provide the attorney representing the board with a copy of the petition and order. The board shall be represented in such appeals by the district or county attorney of the county or the Attorney General, or any of their assistants. The board shall initially determine all facts, but the court upon appeal shall set aside the determination of the board if the board's determination (1) is not based upon substantial evidence upon the entire record; (2) is arbitrary or capricious; (3) is in violation of statutory requirements; or (4) was made without affording to licensee or applicant due process of law.

Surrender of license

Sec. 23. Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the secretary; failure of a licensee to do so shall be a violation of this Act and upon conviction, shall be subject to the penalties hereinafter set forth. At any time after the suspension or revocation of any license, the secretary shall restore it to the former licensee, upon the written recommendations of the board.

Proceedings through the attorney general

Sec. 24. If any person violates any provisions of this Act, the secretary shall, upon direction of a majority of the board, in the name of the State of Texas, through the Attorney General of the State of Texas, apply in any district court of competent jurisdiction, for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this Act, may issue a temporary injunction, without notice or bond, enjoining such continued violation and if it is established that the person has violated or is violating this Act, the court, or any judge thereof, may enter a decree perpetually enjoining the violation or enforcing compliance with this Act. In case of violation of any order or decree issued under the provisions of this Section, the court, or any judge thereof, may try and punish the offender for contempt of court. Proceeding under this Section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

Penalties

Sec. 25. Any person who violates any provision of this Act or any person who falsely states or represents that he has been or is a polygraph examiner or trainee shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for a term of not to exceed six months, or both.

Admissibility of results as evidence

Sec. 26. Nothing in this Act shall be construed as permitting the results of truth examinations or polygraph examinations to be introduced or admitted as evidence in a court of law.

Emergency clause

Sec. 27. The fact that this state has no law licensing and regulating the use of polygraph examination techniques and instruments, and that untrained and unqualified examiners cause great harm to the general public create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended, and this Rule is hereby suspended; and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 13, 1965, by a viva voce vote; Senate concurred in House amendments on May 27, 1965, by a viva voce vote; passed the House on May 26, 1965, with amendments by a non-record vote.

Approved June 16, 1965.

Effective Aug. 30, 1965, 90 days after date of adjournment.

DISTRICT COURT—137th JUDICIAL DISTRICT—CREATION**CHAPTER 442****S. B. No. 127**

An Act relating to the creation of 137th Judicial District Court of Lubbock County, the Criminal District Court No. 5 of Dallas County, the 171st Judicial District Court of El Paso County, the Criminal District Court No. 6 of Harris County, and the Criminal District Court No. 3 of Tarrant County; providing for the courts' jurisdiction, terms, personnel, administration, and practice; making appropriations; providing a severability clause; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1.³⁰ There is created in and for Lubbock County, Texas, an additional district court to be known as the District Court of the 137th Judicial District of Texas, composed of the County of Lubbock.

Sec. 2. The District Court for the 137th Judicial District of Texas shall have and exercise the jurisdiction prescribed by the constitution and laws of this state for district courts in general, and the judge shall have and exercise the powers conferred by the constitution and laws of this state on the judges of district courts. The jurisdiction of the court shall be concurrent with the District Court of the 72nd Judicial District of this state in the County of Lubbock and the District Court of the 99th Judicial District of Texas in Lubbock County and the District Court of the 140th Judicial District of Texas in Lubbock County. Any judge of a district court for Lubbock County may in his discretion in termtime or in vacation, transfer a case or cases, civil or criminal, to another district court with the consent of the judge of the other district court by order entered on the minutes of the court from which the case is transferred, or minutes or orders made in chambers as the case may be. The orders when made shall be copied and certified to by the district clerk of Lubbock County, together with all orders made in the case. The certified copies of the orders, together with the original papers, shall be filed among the papers of any case transferred and the fees shall be taxed as a part of the costs of the suit. The clerk of the court shall docket any case in the court to which it

36. Vernon's Ann.Civ.St. art. 199(137),
§§ 1-10.